

MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

FROM: NANCY H SUTLEY

Chair

Council on Environmental Quality

SUBJECT: Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act

The National Environmental Policy Act (NEPA) provides for a wide array of tools for the efficient and timely conduct of environmental reviews. The Council on Environmental Quality (CEQ) Regulations implementing NEPA contain a number of opportunities for achieving this goal. CEQ is issuing this guidance for Federal departments and agencies to emphasize and clarify those opportunities, fully consistent with a thorough and meaningful environmental review. The guidance also makes it clear that many of the provisions of the CEQ Regulations which specifically refer to an Environmental Impact Statement (EIS) can also apply to an Environmental Assessment (EA). This guidance applies to the preparation of an EA or an EIS consistent with legal precedent and agency NEPA experience and practice.

In conducting all environmental reviews pursuant to NEPA, agencies should use the methods set out in the CEQ Regulations mindful of the following basic principles:

- NEPA encourages simple, straightforward, and concise reviews and documentation that are proportionate to and effectively convey the relevant considerations in a timely manner to the public and decisionmakers while comprehensively addressing the issues presented;
- NEPA should be integrated into project planning rather than be an after-the-fact add-on;
- NEPA reviews should coordinate and take appropriate advantage of existing documents and studies, including through adoption and incorporation by reference;
- Early and well-defined scoping can assist in focusing environmental reviews to appropriate issues that would be meaningful to a decision on the proposed action;
- Agencies are encouraged to develop meaningful and expeditious timelines for environmental reviews; and
- Agencies should respond to comments in proportion to the scope and scale of the environmental issues raised.

This guidance also reflects CEQ's continuing commitment to implement its Plan for Retrospective Review of Existing Regulations ("Plan") in accordance with Executive Order

13563.<sup>1</sup> Our ongoing review of the CEQ Regulations confirms the benefits of integrating environmental reviews, coordinating multi-agency or multi-governmental reviews and approvals, and setting clear schedules for preparing EAs and EISs. This guidance promotes a sufficient and effective process that is tailored to avoid excessive burden. This guidance provides CEQ's interpretation of existing regulations promulgated under NEPA, and does not change agencies' obligations with regard to NEPA and the CEQ Regulations.<sup>2</sup>

### Introduction and Steps to Date

CEQ was created by NEPA in 1970 and is charged with overseeing NEPA implementation by Federal agencies. In 1978, CEQ issued the CEQ Regulations.<sup>3</sup> From time to time, CEQ issues guidance for the Federal agencies, to clarify the requirements and applicability of various provisions of NEPA and the CEQ Regulations, and to ensure that those requirements can be met in a timely and effective fashion.<sup>4</sup> These guidance documents represent CEQ's interpretation of NEPA, which the U.S. Supreme Court has said is "entitled to substantial deference."<sup>5</sup>

NEPA requires Federal agencies to consider the potential environmental consequences of their proposed action, and any reasonable alternatives, before deciding whether and in what form to take an action. Environmental reviews prepared under NEPA should provide a decisionmaker with relevant and timely information, and the CEQ Regulations make it clear that "NEPA's purpose is not to generate paperwork--even excellent paperwork--but to foster excellent action."<sup>6</sup>

Complying with NEPA can take three forms, that of a Categorical Exclusion, an Environmental Assessment, or an Environmental Impact Statement:

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<sup>1</sup> Improving Regulation and Regulatory Review, Exec. Order No. 13,563, 76 Fed. Reg. 3,821 (Jan. 21, 2011), *available at* [www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf](http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf).

<sup>2</sup> This guidance is not a rule or regulation, and the recommendations it contains may not apply to a particular situation based upon the individual facts and circumstances. This guidance does not change or substitute for any law, regulations, or any other legally binding requirement and is not legally enforceable. The use of non-mandatory terminology such as "guidance," "recommend," "may," "should," and "can," is intended to describe CEQ policies and recommendations. The use of mandatory terminology such as "shall," "must," and "required" is intended to describe controlling requirements under NEPA and the CEQ Regulations, but this document does not establish legally binding requirements in and of itself.

<sup>3</sup> The Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 C.F.R. pts. 1500-1508 (2011) [hereinafter CEQ Regulations], *available on* [www.nepa.gov/ceq\\_hss.doe.gov/ceq\\_regulations/regulations.html](http://www.nepa.gov/ceq_hss.doe.gov/ceq_regulations/regulations.html).

<sup>4</sup> These guidance documents are available online at [ceq.hss.doe.gov/ceq\\_regulations/guidance](http://ceq.hss.doe.gov/ceq_regulations/guidance).

<sup>5</sup> *Andrus v. Sierra Club*, 442 U.S. 347, 358 (1979).

<sup>6</sup> 40 C.F.R. § 1500.1(c).

- Categorical Exclusion (CE): A CE is a category of actions that is expected not to have individually or cumulatively significant environmental impacts.<sup>7</sup> Each agency's procedures for implementing NEPA sets out that agency's CEs, which are established after CEQ and public review. A proposed action within such a category is excluded from further analysis and documentation in an Environmental Assessment or an Environmental Impact Statement.<sup>8</sup> A CE can be concluded with a determination that a proposed action falls within one of the categories of actions and there are no extraordinary circumstances indicating further environmental review is warranted.
- Environmental Assessment (EA): When a CE is not appropriate and the agency has not determined whether the proposed action will cause significant environmental effects, then an EA is prepared. If, as a result of the EA, a Finding of No Significant Impact (FONSI) is appropriate, then the NEPA review process is completed with the FONSI, including documentation of its basis in the EA; otherwise an Environmental Impact Statement is prepared.<sup>9</sup>
- Environmental Impact Statement (EIS): The most intensive level of analysis is the Environmental Impact Statement, which is typically reserved for the analysis of proposed actions that are expected to result in significant environmental impacts. When an EIS is prepared, the NEPA review process is concluded when a record of decision (ROD) is issued.<sup>10</sup>

CEQ has been working with agencies to modernize and reinvigorate NEPA implementation in several ways. CEQ issued guidance on the development and use of Categorical Exclusions in November 2010.<sup>11</sup> Properly developed and applied, Categorical Exclusions provide an efficient tool to complete the NEPA environmental review process for proposals that normally do not require more resource-intensive EAs or EISs. The use of Categorical Exclusions can reduce paperwork and delay for proposed actions that do not raise the potential for significant environmental effects.<sup>12</sup> In January 2011, CEQ provided guidance that specifically addressed the appropriate use of a FONSI to conclude the NEPA review process relying on an EA. A mitigated FONSI is appropriate when mitigation is used to avoid or lessen potentially significant

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<sup>7</sup> Categorical exclusions can also be created legislatively.

<sup>8</sup> 40 C.F.R. §§ 1508.4, 1500.5(k).

<sup>9</sup> 40 C.F.R. § 1508.9.

<sup>10</sup> 40 C.F.R. § 1505.2.

<sup>11</sup> CEQ, "Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act" (Nov. 23, 2010), *available at* [ceq.hss.doe.gov/ceq\\_regulations/NEPA\\_CE\\_Guidance\\_Nov232010.pdf](http://ceq.hss.doe.gov/ceq_regulations/NEPA_CE_Guidance_Nov232010.pdf).

<sup>12</sup> See 40 C.F.R. § 1500.4(p) (recommending categorical exclusions as a tool to reduce paperwork) and § 1500.5(k) (recommending categorical exclusions as a tool to reduce delay).

environmental effects of proposed actions that would otherwise need to be analyzed in an EIS.<sup>13</sup> In addition, in May 2010, CEQ issued guidance on ensuring efficient and expeditious compliance with NEPA when agencies must take exigent action to protect human health or safety and valued resources in a timeframe that does not allow sufficient time for the normal NEPA process.<sup>14</sup>

In August 2011 the President called for further steps to enhance the efficient and effective permitting and environmental review of infrastructure development “through such strategies as integrating planning and environmental reviews; coordinating multi-agency or multi-governmental reviews and approvals to run concurrently; setting clear schedules for completing steps in the environmental review and permitting process; and utilizing information technologies to inform the public about the progress of environmental reviews as well as the progress of Federal permitting and review processes.”<sup>15</sup> This guidance sets forth straightforward ways by which the CEQ Regulations, properly understood and applied, support these strategies.

#### 1. Concise NEPA Documents

Agencies are encouraged to concentrate on environmental analysis in their EAs and EISs, not to produce an encyclopedia of all applicable information.<sup>16</sup> Environmental analysis should focus on significant issues, discussing insignificant issues only briefly.<sup>17</sup> Impacts should be discussed in proportion to their significance, and if the issues are not deemed significant there should be only enough discussion to show why more study is not warranted.<sup>18</sup> Scoping,<sup>19</sup>

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<sup>13</sup> CEQ, “Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact” (Jan. 14, 2011), *available at* [ceq.hss.doe.gov/current\\_developments/docs/Mitigation\\_and\\_Monitoring\\_Guidance\\_14Jan2011.pdf](http://ceq.hss.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf).

<sup>14</sup> CEQ, “Emergencies and the National Environmental Policy Act,” (May 12, 2010), *available at* [ceq.hss.doe.gov/ceq\\_regulations/Emergencies\\_and\\_NEPA\\_Memorandum\\_12May2010.pdf](http://ceq.hss.doe.gov/ceq_regulations/Emergencies_and_NEPA_Memorandum_12May2010.pdf).

<sup>15</sup> Presidential Memorandum, “Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review” (Aug. 31, 2011), *available at* [www.whitehouse.gov/the-press-office/2011/08/31/presidential-memorandum-speeding-infrastructure-development-through-more](http://www.whitehouse.gov/the-press-office/2011/08/31/presidential-memorandum-speeding-infrastructure-development-through-more).

<sup>16</sup> 40 C.F.R. §§ 1500.4(b), 1502.2(b).

<sup>17</sup> 40 C.F.R. § 1502.2(c); *see also* 40 C.F.R. § 1502.2(a) (“Environmental impact statements shall be analytic rather than encyclopedic.”).

<sup>18</sup> 40 C.F.R. § 1502.2(b).

<sup>19</sup> 40 C.F.R. § 1500.4(g).

incorporation by reference,<sup>20</sup> and integration of other environmental analyses<sup>21</sup> are additional methods that may be used to avoid redundant or repetitive discussion of issues.<sup>22</sup>

All NEPA environmental documents, not just EISs, should be written in plain language,<sup>23</sup> follow a clear format, and emphasize important portions of the impact analysis over mere background material. Clarity and consistency ensure that the substance of the agency's analysis is understood clearly, avoiding unnecessary confusion or risk of litigation that could result from an ambiguous or opaque analysis. The CEQ Regulations indicate that the text of a final EIS that addresses the purpose and need, alternatives, affected environment, and environmental consequences should normally be less than 150 pages and a final EIS for proposals of unusual scope or complexity should normally be less than 300 pages.<sup>24</sup>

In light of the growth of environmental requirements since the publication of the CEQ Regulations, and the desire to use the EIS to address, via integration, those requirements, it is recognized that there will be a range of appropriate lengths of EISs. Nevertheless, agencies should keep EISs as concise as possible (continuing to relegate relevant studies and technical analyses to appendices) and no longer than necessary to comply with NEPA and the other legal and regulatory requirements being addressed in the EIS, and to provide decision makers and the public with the information they need to assess the significant environmental effects of the action under review. Length should vary with the number, complexity and significance of potential environmental problems.<sup>25</sup>

Similarly, the CEQ guidance issued in 1981 indicated that 10-15 pages is generally appropriate for EAs.<sup>26</sup> This guidance must be balanced with the requirement to take a hard look

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<sup>20</sup> 40 C.F.R. § 1500.4(j).

<sup>21</sup> 40 C.F.R. § 1500.4(k).

<sup>22</sup> *See generally* 40 C.F.R. § 1502.1 (EISs should be written in plain language so that decisionmakers and the public can understand them).

<sup>23</sup> 40 C.F.R. § 1502.8.

<sup>24</sup> 40 C.F.R. § 1502.7.

<sup>25</sup> 40 C.F.R. § 1502.2(c) (EISs “shall be kept concise and . . . [l]ength should vary first with potential environmental problems and then with project size”).

<sup>26</sup> *See* CEQ, “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations” (Mar. 16, 1981), *available at* [ceq.hss.doe.gov/nepa/regs/40/30-40.HTM#36](http://ceq.hss.doe.gov/nepa/regs/40/30-40.HTM#36) (Question 36a and Answer). Note that at the time of Forty-Questions memorandum CEQ was of the opinion that mitigated Findings of No Significant Impact were only appropriate if the mitigation measures were imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. *See id.* (Question 40 and Answer). CEQ has since published guidance accepting mitigated FONSI as another means of efficiently concluding the NEPA process without producing an EIS. CEQ, “Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact” (Jan. 14, 2011), *available at*

at the impacts of the proposed action. As with EISs, an EA's length should vary with the scope and scale of potential environmental problems, rather than just with the scope and scale of the proposed action.<sup>27</sup> The EA should be no more elaborate than necessary to fulfill the functions and goals set out in the CEQ Regulations: (1) briefly provide sufficient evidence and analysis for determining whether to prepare an EIS; (2) aid an agency's compliance with NEPA when no EIS is necessary, i.e., the EA helps to identify and analyze better alternatives and mitigation measures; and (3) facilitate preparation of an EIS when one is necessary.<sup>28</sup>

## 2. Early NEPA Integration in Planning

An agency should first consider integrating the NEPA process into planning when it structures its internal process for developing a proposed policy, program, management plan, or project. Agencies must integrate the NEPA process into their planning at the earliest possible time to ensure that planning and decisions reflect environmental values, avoid delays later in the process, and anticipate and attempt to resolve potential issues.<sup>29</sup> NEPA should not become an after-the-fact process that justifies decisions that have entirely, or in large part, already been made.<sup>30</sup>

The CEQ Regulations emphasize early NEPA planning in the context of an EIS. The scoping process can be used before a notice of intent to seek useful information on a proposal from agencies and the public.<sup>31</sup> For example, agencies can commence the process to prepare an EIS during the early stages of development of a proposal, to ensure that the environmental analysis can be completed in time for the agency to consider the final EIS before making a decision on the proposal.<sup>32</sup> Further, an agency shall prepare an EIS so that it can inform the decisionmaking process in a timely manner "and will not be used to rationalize or justify decisions already made."<sup>33</sup>

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[ceq.hss.doe.gov/current\\_developments/docs/Mitigation\\_and\\_Monitoring\\_Guidance\\_14Jan2011.pdf](http://ceq.hss.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf).

<sup>27</sup> See 40 C.F.R. § 1508.9 (stating the EA is "a concise public document") and 40 C.F.R. § 1502.2(c) (interpreting the conciseness requirement for an EIS to mean that "length should vary first with potential environmental problems and then with project size").

<sup>28</sup> 40 C.F.R. § 1508.9(a).

<sup>29</sup> 40 C.F.R. § 1501.2.

<sup>30</sup> 40 C.F.R. § 1502.2(g).

<sup>31</sup> See CEQ Memorandum to Agencies, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" (Mar. 16, 1981), *available at* [ceq.hss.doe.gov/nepa/regs/40/11-19.HTM#13](http://ceq.hss.doe.gov/nepa/regs/40/11-19.HTM#13) (Question 13 and Answer).

<sup>32</sup> See 40 C.F.R. § 1508.23 (explaining that a proposal exists as soon as an agency "has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated").

<sup>33</sup> 40 C.F.R. § 1502.5. For guidelines specific to different agency activities, see 40 C.F.R. § 1502.5(a)-(d). Misuse of the NEPA process to justify decisions already made is

If agencies are to prepare efficient EAs, then they should adhere to these same principles and ensure that the EA is prepared in conjunction with the development of the proposed action, and in time to inform the public and the decisionmaker. Agencies should review their NEPA implementing procedures as well as their NEPA practices to ensure that NEPA is integrated into overall project management to the fullest extent possible whether the agencies are preparing an EA or an EIS.

The CEQ Regulations call upon agencies to provide for situations where the initial planning process is in the hands of an applicant or other non-Federal entity.<sup>34</sup> The Regulations require Federal agencies to address these situations in their NEPA implementing procedures.<sup>35</sup> Consequently, agencies that have a reasonably foreseeable role in actions that are initially developed by private applicants or other non-Federal entities must plan for those situations. The NEPA implementing procedures for such agencies must provide access to designated staff or the policies that can inform applicants and other non-Federal entities of studies or other information foreseeably required for later Federal action.<sup>36</sup>

Advanced planning for initially non-Federal actions must also ensure that the Federal agency is able to initiate early consultation with appropriate Tribes, States, local agencies, and interested private persons and organizations when Federal involvement is reasonably

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counterproductive and can result in litigation that could delay and ultimately prevent a proposed action from proceeding.

<sup>34</sup> See 40 C.F.R. § 1501.2(d) (non-Federal entities plan activities prior to Federal involvement that trigger NEPA requirements).

<sup>35</sup> 40 C.F.R. § 1507.3(b)(1). All agencies are required to adopt procedures that supplement the CEQ Regulations and provide NEPA implementing guidance that both provides agency personnel with additional, more specific direction for implementing the procedural provisions of NEPA and informs the public and State and local officials of how the CEQ Regulations will be implemented in agency decisionmaking. Agency procedures should therefore provide Federal personnel with the direction they need to implement NEPA on a day-to-day basis. The procedures must also provide a clear and uncomplicated picture of what those outside the Federal government may do to become involved in the environmental review process under NEPA. See CEQ, “Agency Implementing Procedures Under CEQ’s NEPA Regulations” (Jan. 19, 1979), *available at* [ceq.hss.doe.gov/nepa/regs/exec11979.html](http://ceq.hss.doe.gov/nepa/regs/exec11979.html). Some examples of agency NEPA implementing procedures are the Department of the Interior, “Department Manual: Managing the NEPA Process--National Park Service” (May 27, 2004), *available at* [http://206.131.241.18/app\\_dm/act\\_getfiles.cfm?relnum=3622](http://206.131.241.18/app_dm/act_getfiles.cfm?relnum=3622) and the Department of the Interior, “Departmental Manual: Managing the NEPA Process--Bureau of Land Management” (May 8, 2008), *available at* [http://elips.doi.gov/app\\_dm/act\\_getfiles.cfm?relnum=3799](http://elips.doi.gov/app_dm/act_getfiles.cfm?relnum=3799).

<sup>36</sup> 40 C.F.R. § 1501.2(d)(1).

foreseeable.<sup>37</sup> For actions initiated at the request of a non-Federal entity, Federal agencies should begin the NEPA process for preparing their EA or EIS as early as possible but no later than upon receipt of a complete application.<sup>38</sup> Federal agencies should, whenever possible, guide applicants to gather and develop the appropriate level of information and analyses in advance of submitting an application or other request for federal agency action. For example, several agencies require an applicant to prepare and submit an environmental report to help prepare the NEPA analyses and documentation and facilitate the lead agency's independent environmental review of the proposal.

### 3. Scoping

To effectuate integration, avoid duplication, and focus the NEPA review, the CEQ Regulations provide for “scoping.”<sup>39</sup> In scoping, the lead agency determines the issues that its EA or EIS will address and identifies the significant issues related to the proposed action that will be considered in the analysis.<sup>40</sup> To increase efficiency, the lead agency can solicit cooperation at the earliest possible time from other agencies that have jurisdiction by law or special expertise on any environmental issue that should be considered. Cooperating agencies with jurisdiction by law or special expertise can work with the lead agency to ensure that, whenever possible, one NEPA review process informs all the decisions needed to determine whether and, if so, how a proposed action will proceed.<sup>41</sup>

The CEQ Regulations explicitly address the role of scoping in preparation of an EIS. Agencies can also choose to take advantage of scoping when preparing an EA that deals with

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<sup>37</sup> 40 C.F.R. § 1501.2(d)(2). Agencies should be cognizant of their obligations under current Executive Orders 13175 (Consultation and Coordination with Indian Tribal Governments, Nov. 6, 2000) and 112898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Feb 11, 1994), *available at* [ceq.hss.doe.gov/laws\\_and\\_executive\\_orders/executive\\_orders.html](http://ceq.hss.doe.gov/laws_and_executive_orders/executive_orders.html).

<sup>38</sup> 40 C.F.R. § 1501.2(d)(3).

<sup>39</sup> See 40 C.F.R. § 1501.7 (“There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping.”).

<sup>40</sup> 40 C.F.R. §§ 1500.4(b), (g) and 1501.7.

<sup>41</sup> See 40 C.F.R. §§ 1501.6, 1508.5 (responsibilities of the lead agency include the requirement to request the participation of any other Federal agency which has jurisdiction by law). CEQ has released previous guidance on engaging other agencies with jurisdiction over permits and other approvals required for a proposal to proceed. CEQ, “Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act” (Jan. 30, 2002), *available at* [ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html](http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html); CEQ, “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations” (Mar. 16, 1981), *available at* [ceq.hss.doe.gov/nepa/regs/40/11-19.HTM#14](http://ceq.hss.doe.gov/nepa/regs/40/11-19.HTM#14) (Question and Answer 14).



uncertainty or controversy regarding potential conflicts over the use of resources or the environmental effects of the proposed action. For example, a lead agency preparing such an EA may use scoping to identify and eliminate from detailed study the issues that are not significant or that have been covered by prior environmental review.<sup>42</sup> The scoping process provides a transparent way to identify significant environmental issues *and* to deemphasize insignificant issues,<sup>43</sup> thereby focusing the analysis on the most pertinent issues and impacts.<sup>44</sup>

The scoping process can be particularly helpful in identifying opportunities to coordinate reviews and related surveys and studies required by other laws or by executive orders. Scoping should also be used to begin inter- and intra-governmental coordination if it is not already ongoing. To accomplish these goals, the lead agency preparing an EA or an EIS can choose to invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and “other interested persons (including those who might not be in accord with the action on environmental grounds).”<sup>45</sup> In addition to facilitating coordination and the development of required environmental reviews, scoping will help to identify the universe of matters that need to be addressed with particular care and flag issues for thorough consideration, thereby defusing potential conflict that, absent early attention, could arise later and potentially delay the timely completion of the relevant NEPA review.<sup>46</sup>

In sum, the scoping process provides an early opportunity to plan collaboration with other governments,<sup>47</sup> assign responsibilities,<sup>48</sup> and develop the planning and decisionmaking

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<sup>42</sup> 40 C.F.R. § 1501.7(a)(3).

<sup>43</sup> 40 C.F.R. § 1500.4(g).

<sup>44</sup> *See generally* 40 C.F.R. § 1501.4(b) (agencies are to involve the public in the preparation of EAs; the manner in which they do so is left to the agency).

<sup>45</sup> 40 C.F.R. §§ 1501.7(a)(1), 1501.4(b), 1506.6. Establishing cooperating agency status is discussed in greater detail in a CEQ memorandum addressed to the heads of Federal agencies, entitled “Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act.” CEQ, “Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act” (Jan. 30, 2002), *available at* [ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html](http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html).

<sup>46</sup> In cases where a Federal agency uses scoping for an EA and subsequently determines it is necessary to conduct an EIS, the agency should refer to the guidance previously published by the CEQ. *See* CEQ, “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations” (Mar. 16, 1981), *available at* [ceq.hss.doe.gov/nepa/regs/40/30-40.HTM#13](http://ceq.hss.doe.gov/nepa/regs/40/30-40.HTM#13) (Question 13 and the following answer state that scoping done before the assessment, and in aid of its preparation, cannot substitute for the normal scoping process after publication of the NOI, unless the earlier public notice stated clearly that this possibility was under consideration, and the NOI expressly provides that written comments on the scope of alternatives and impacts will still be considered).

<sup>47</sup> 40 C.F.R. §§ 1501.6, 1508.5. CEQ has published guidance encouraging lead agencies to establish a formal cooperating agency relationship with other Federal agencies as well as State,

schedule.<sup>49</sup> It also affords lead agencies the option of setting page limits for environmental documents and setting time limits for the steps in the NEPA process.<sup>50</sup> Agencies may also choose to use scoping whenever any of these techniques can provide for the more effective and efficient preparation of an EA.

#### 4. Inter-Governmental Coordination (State, Local, or Tribal Environmental Reviews)

CEQ encourages Federal agencies to collaborate with Tribal, State, and local governments to the fullest extent possible to reduce duplication, unless the agencies are specifically barred from doing so by some other law.<sup>51</sup> The CEQ Regulations explicitly provide for agencies to conduct joint planning processes, joint environmental research and studies, joint public hearings (except where otherwise provided by statute), and joint environmental assessments.<sup>52</sup> Federal agencies should explore every reasonable opportunity to integrate the requirements of NEPA with the external planning and environmental reviews required on the Federal as well as the State, Tribal, and local levels of government so that those reviews can run concurrently rather than consecutively.<sup>53</sup>

Where State law or local ordinances contain environmental impact analysis and documentation requirements in addition to, but not in conflict with, those in NEPA, the CEQ Regulations provide authority for producing joint EISs.<sup>54</sup> In such cases, Federal agencies shall cooperate in fulfilling the State, Tribal, and local environmental impact analysis and documentation requirements as well as the requirements of other environmental laws so that one document will suffice for complying with as many applicable laws as practicable. Federal agencies should seek efficiencies and avoid delay by attempting to meet applicable non-Federal NEPA-like requirements in conjunction with either an EA or an EIS wherever possible.

The CEQ Regulations also require that a Federal agency preparing an EIS better integrate the EIS into non-Federal planning processes by discussing and explaining any inconsistency of a

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Tribal, and local governmental entities. CEQ, “Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act” (Jan. 30, 2002), *available at* [ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html](http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html).

<sup>48</sup> See, e.g., 40 C.F.R. § 1501.7(a)(4) (a lead agency may allocate responsibility for EIS preparation and analysis among cooperating agencies during scoping).

<sup>49</sup> 40 C.F.R. § 1501.7(a)(7).

<sup>50</sup> 40 C.F.R. §§ 1501.7(b)(1)-(2), 1501.8.

<sup>51</sup> 40 C.F.R. § 1506.2(b).

<sup>52</sup> 40 C.F.R. § 1506.2(b); see also 40 C.F.R. § 1500.4(n) (encouraging Federal agencies to eliminate duplication with State and local procedures through joint preparation of documents).

<sup>53</sup> 40 C.F.R. § 1500.2(c). This point is reiterated throughout the CEQ Regulations.

<sup>54</sup> 40 C.F.R. § 1506.2(c).

proposed Federal action with any approved State or local plan and laws.<sup>55</sup> When preparing an EA or EIS, if an inconsistency with any approved Tribal, State, or local plan or laws exists, the Federal agency should describe the extent to which it will reconcile its proposed action with the non-Federal plan or law.<sup>56</sup>

5. Coordinating Reviews and Documents Under Other Applicable Laws

Agencies must integrate, to the fullest extent possible, their draft EIS with environmental impact analyses and related surveys and studies required by other laws or by executive order.<sup>57</sup> Coordinated and concurrent environmental reviews are appropriate whenever other analyses, surveys, and studies will consider the same issues and information as a NEPA analysis. Such coordination should be considered when preparing an EA as well as when preparing an EIS.

The goal should be to conduct concurrent rather than sequential processes whenever appropriate. In situations where one aspect of a project is within the particular expertise or jurisdiction of another agency an agency should consider whether adoption or incorporation by reference of materials prepared by the other agency would be more efficient.

A coordinated or concurrent process may provide a better basis for informed decision making, or at least achieve the same result as separate or consecutive processes while avoiding unnecessary duplication of effort. In addition to integrating the reviews and analyses, the CEQ Regulations also state that any environmental document that complies with NEPA may be combined with any other agency document to reduce duplication and paperwork.<sup>58</sup>

6. Adoption

The adoption of one Federal agency's EIS, or a portion of that EIS, by another Federal agency is an efficiency that the CEQ Regulations provide.<sup>59</sup> An agency preparing an EA should similarly consider adopting another agency's EA when the EA or a portion thereof addresses the proposed action and meets the standards for an adequate EA under NEPA, the CEQ's Regulations, and the adopting agency's NEPA implementing procedures.

The CEQ Regulations require agencies to involve agencies, applicants and the public; however, they do not require agencies to prepare a draft EA and circulate a draft or final EA for

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<sup>55</sup> 40 C.F.R. § 1506.2(d).

<sup>56</sup> 40 C.F.R. § 1506.2(d).

<sup>57</sup> 40 C.F.R. § 1502.25(a). Examples provided in the Regulation are: the Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*); the National Historic Preservation Act (16 U.S.C. § 470 *et seq.*); and the Endangered Species Act (16 U.S.C. § 1531 *et seq.*).

<sup>58</sup> 40 C.F.R. §§ 1506.4, 1500.4(k) & (n).

<sup>59</sup> 40 C.F.R. § 1506.3.

public review or comment.<sup>60</sup> If an agency's implementing NEPA procedures establish requirements for public review and comment when preparing an EA, however, then the adopting agency must provide a similar process when it adopts the preparing agency's EA.

In those cases where the adopting agency is also a cooperating agency in the preparation of an EIS, it may adopt the lead agency's EIS without additional public involvement when, after an independent review, it concludes that the lead agency has adequately addressed the adopting agency's comments and suggestions.<sup>61</sup> Similarly, when the adopting agency was a cooperating agency in the preparation of an EA, it may adopt the EA without additional public involvement.

#### 7. Incorporation by Reference

Incorporation by reference is another method that provides efficiency and timesaving when preparing either an EA or an EIS. The CEQ Regulations direct agencies to incorporate material into an EIS by reference to reduce the size of the EIS and avoid duplicative effort.<sup>62</sup> An agency must cite the incorporated material in an EIS and briefly describe the content.<sup>63</sup> An agency may not incorporate any material by reference in an EIS unless the material is reasonably available for inspection by potentially interested persons within the time allowed for comment.<sup>64</sup> Agencies can, consistent with NEPA and the CEQ Regulations, incorporate documents into an EA by reference provided the content has been briefly described and the materials are reasonably available for review by interested parties.

#### 8. Expediting Responses to Comments

Agencies should provide a reasonable and proportionate response to comments on a draft EIS by focusing on the environmental issues and information conveyed by the comments. When preparing a final EIS, if the draft EIS complies with NEPA, CEQ regulations, and agency implementing procedures, the agency may use the draft EIS as the final EIS under certain conditions. If changes in response to comments are minor and are limited to factual corrections and/or explanations of why the comments do not warrant further agency response, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement.<sup>65</sup> In such cases, the agency must circulate only the comments, the responses and the

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<sup>60</sup> See generally 40 C.F.R. §§ 1501.4(b), 1506.6 (both regulations direct agencies to involve the public in the preparation of EAs; however, the manner in which they do so is left to the agency).

<sup>61</sup> 40 C.F.R. § 1506.3(c).

<sup>62</sup> 40 C.F.R. § 1502.21.

<sup>63</sup> 40 C.F.R. § 1502.21.

<sup>64</sup> See 40 C.F.R. § 1502.21 (material based on proprietary data which is itself not available for review and comment cannot be incorporated by reference).

<sup>65</sup> 40 C.F.R. §§ 1503.4(c), 1500.4(m).

changes, and not the final statement.<sup>66</sup> Only the comments, responses, and changes need be filed with the draft document and a new cover sheet to make the EIS final, under those circumstances.<sup>67</sup> Similarly, if an agency issues an EA for comment and the changes in response to comments are minor and limited to factual corrections and/or explanations of why the comments do not warrant further agency response, then the agency may prepare a similar cover and errata sheet and use its draft EA as the final EA.

## 9. Clear Time Lines for NEPA Reviews

Establishing appropriate time limits promotes the efficiency of the NEPA process.<sup>68</sup> The CEQ Regulations do not prescribe universal time limits for the entire NEPA process; instead they set certain minimum time limits for the various portions of the NEPA process.<sup>69</sup> The CEQ Regulations do encourage Federal agencies to set appropriate time limits for individual actions, however, and provide a list of factors to consider in establishing timelines.<sup>70</sup> Those factors include: the potential for environmental harm; the size of the proposed action; other time limits imposed on the action by other laws, regulations, or executive orders; and the degree of public need for the proposed action and the consequences of delay. The CEQ Regulations refer to the EIS process when describing the “constituent parts of the NEPA process” to which time limits may apply, require agencies to set time limits at the request of an applicant, and allow agencies to set time limits at the request of other interested parties.<sup>71</sup> It is entirely consistent with the purposes and goals of NEPA and with the CEQ Regulations for agencies to also determine appropriate time limits for the EA process when requested by applicants, Tribes, States, local agencies, or members of the public.

## Conclusion

This guidance describes methods provided in the CEQ regulations that agencies preparing an EA or an EIS may employ to prepare concise and timely NEPA reviews. Using methods such as integrating planning and environmental reviews and permitting, coordinating multi-agency or multi-governmental reviews and approvals, and setting schedules for completing the environmental review will assist agencies in preparing efficient and timely EAs and EISs consistent with legal precedent and agency NEPA experience and practice.

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<sup>66</sup> 40 C.F.R. § 1503.4(c).

<sup>67</sup> 40 C.F.R. § 1503.4(c).

<sup>68</sup> 40 C.F.R. § 1500.5(e).

<sup>69</sup> See 40 C.F.R. § 1506.10 (setting 90 day time period between EPA publication of the notice of availability of a draft EIS and the Record of Decision, 30 day time period between EPA publication of the notice of availability of a final EIS and the Record of Decision, and 45 days for comment on a draft EIS).

<sup>70</sup> CEQ encourages Federal agencies to set time limits consistent with the time intervals required by § 1506.10. 40 C.F.R. § 1501.8.

<sup>71</sup> 40 C.F.R. § 1501.8(a), (c).